IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-11-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.19576 of 2003
and
WPMP No.24459 of 2003
and
WVMP No.352 of 2007

Muthuraj
Inspector of Police (Crime)
B-10 Selvapuram Police Station
Coimbatore .. Petitioner

vs

1.State Human Rights Commission
Tamil Nadu
No.35, Thiru.Vi.Ka.Salai
Chennai 600 014.
2.T.Venkateswaran
3.M.M.Rangasamy
4.Kanakaraj
5.Jeeva
6.Sivaraman .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records of the complaint dated 1.7.2002 in Case No.3950 of 2002/SS on the file of the State Human Rights Commission Tamilnadu, the first respondent herein and quash the same.

For Petitioner : Mr.P.Rathanavel
For Respondents : Mrs.N.Kanthimathi for R1
Mr.K.S.Dinakaran for R2

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ORDER

Challenge is made to a complaint pending on the file of the first respondent State Human Rights Commission Tamilnadu on the ground that the first respondent has no jurisdiction to conduct an enquiry in view of the provisions of the Protection of Human Rights Act, 1993.

2.The affidavit in support of the writ petition and the affidavit in support of the vacate stay petition filed by the second respondent, are perused. The Court heard the learned Counsel on either side.

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3.Admittedly, the second respondent filed a petition before the first respondent State Human Rights Commission Tamilnadu on 1.7.2002, against the petitioner and the respondents 2 and 6 herein alleging that on 28.2.2002, the petitioner attacked and manhandled the second respondent using filthy words, without any reasonable cause or any prior introduction so as to help the respondents 3 to 6. The complaint was taken on file in Case No.3950 of 2002/SS by the first respondent, and summons were issued to the petitioner and others by its order dated 16.4.2003, directing the petitioner to appear before the Commission on 13.5.2003. Accordingly, the petitioner appeared before the Commission on 13.5.2003. On that day, the matter was adjourned to a subsequent date for enquiry. Pending the enquiry, the proceedings before the first respondent Commission was challenged by way of this writ petition.

4.Advancing his arguments on behalf of the petitioner, the learned Counsel would submit that the Commission is conducting the enquiry on the complaint filed by the second respondent without any jurisdiction; that Sec.36(2) of the Protection of Human Rights Act, 1993, provides that the State Human Rights Commission shall not enquire into any matter after the expiry of one year from the date on which the act constituting the violation of human rights, is alleged to have been committed; that in the instant case, the alleged date of violation of human rights was 28.2.2002; that the second respondent filed the complaint before the State Human Rights Commission on 1.7.2002; that the Commission issued summons on 16.4.2003; that on appearance by the petitioner, the matter was adjourned for enquiry; that the Commission, after the period of one year from the date of the incident, cannot enquire into the matter since it is a legal bar as envisaged under Sec.36(2) of the Act, and under the circumstances, the complaint has got to be quashed.

5.Contrary to the above, the learned Counsel for the second respondent would submit that it is true that in the instant case, the complaint was made on 1.7.2002; that the period of one year what is contemplated under Sec.36(2) of the Act, cannot be said to be taken from the date of the incident since the complaint has been given within a reasonable time and has also been taken on file; and that under the circumstances, it cannot be stated that the enquiry cannot be conducted beyond the period of one year. 6.In support of his contention, the learned Counsel for the second respondent relied on a decision of the Apex Court reported in (1999) 2 SUPREME COURT CASES 131 (PARAMJIT KAUR V. STATE OF PUNJAB AND OTHERS). He would further add that in such a case, the Court has got its powers, in exercise of the writ jurisdiction, to extend the time for the conduct of the enquiry, and under the circumstances, the petition has got to be dismissed.

7.The Court paid its anxious consideration on the submissions made.

8.Concededly, the alleged act of violation of the human rights has taken place on 28.2.2002. The second respondent made a complaint on 1.7.2002. The Commission has issued summons on 16.4.2003, and now, the enquiry is pending. The legal plea that is put forth by the petitioner's side, is rested on the provisions of Sec.36(2) of the

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Protection of Human Rights Act, 1993. It would be more apt and appropriate to reproduce the provisions of Sec.36(2) of the Act as follows:

> "36.Matters not subject to jurisdiction of the Commission:-
> (1).....
> (2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

9.The very reading of the above provision would make it clear that the period of limitation namely one year, prescribed under Sec.36(2) of the Act for taking up the enquiry, is mandatory. Further, it can be well stated that it is actually a judicial bar, and taking up the enquiry after a period of one year, would be against the mandatory provision under Sec.36(2) of the Act since the same, in the opinion of this Court, is a judicial bar. That apart, there is no provision in the entire enactment to extend the said period of limitation. Only in extraordinary circumstances, if exist, the complaint can be enquired into even after the period of one year. In the instant case, no extraordinary circumstance is noticed by the Court. If the Commission is permitted to conduct the enquiry beyond the period of one year, that would be nothing but extending the period of limitation as envisaged under Sec.36(2) of the Act. In such circumstances, applying the provision of Sec.36(2) of the Act, now the enquiry which is being conducted beyond the period of one year, cannot be allowed to be continued. Accordingly, the complaint is quashed, and this writ petition is allowed. No costs. Consequently, connected WPMP and WVMP are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To:
1.State Human Rights Commission
Tamil Nadu
No.35, Thiru.Vi.Ka.Salai
Chennai 600 014.
+ 1 CC To Mr.P.Rathinavel, Advocate SR NO.68893

+ 1 CC To Mr.N.Kanthimathi, Advocate SR NO.68572

WP No.19576 of 2003

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